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Supreme Court, U.S.
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IN THE

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2008

NELLINA L. LOFTON-TAYLOR,

PETITIONER,

VS.

VERIZON WIRELESS,

RESPONDENT.

APPEAL FROM:

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
CASE NO.: 05-00532-B

ELEVENTH CIRCUIT COURT OF APPEALS
CASE NO.: 06-16142-GG

LARRY C. MOORER
Attorney for Petitioner
107 North Jackson St.
Mobile, AL 36602
(251) 432-0002

QUESTIONS PRESENTED FOR REVIEW

WHETHER THERE ARE SUBSTANTIAL FACTS TO SUPPORT A FINDING BY A JURY THAT THE ACTION OF VERIZON WIRELESS IN SUBMITTING PETITIONER'S CHECK TO CERTIGY FOR COLLECTION, WHEN IT HAD NO LEGAL RIGHT TO COLLECT FOR SAID CHECK, PLACED PETITIONER IN A FALSE LIGHT, AND MANIFESTED A MALICIOUS OR WILLFUL INTENT TO INJURE HER, SO AS TO CONSTITUTE A CLAIM FOR DEFAMATION AND INVASION OF PRIVACY UNDER SECTION 1681h(e) OF THE FAIR CREDIT REPORTING ACT?

PARTIES

(1) Allred, David E., Attorney for Respondent

(2) Driver, Joseph H., Attorney for Respondent

(3) Granade, Honorable Judge Callie V. S., Trial Judge

(4) Moorer, Larry C., Attorney for Petitioner

(5) Taylor, Nellina L.-Lofton , Petitioner

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JURISDICTION

On January 23, 2008, the Eleventh Circuit Court of Appeals entered its decision affirming the United States District Court for the Southern District of Alabama judgment which granted summary judgment in favor of Respondent and dismissed Petitioner's complaint against Verizon Wireless with prejudice. On March 18, 2008, Petitioner's Petition for Rehearing and Petition for Rehearing En Banc were denied. (Appendixes A,B and C). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1). No other petitioner is involved in this petition.

FEDERAL STATUTE INVOLVED

Fair Credit Reporting Act.

STATEMENT OF THE CASE

On September 19, 2005, Petitioner filed her complaint in the U.S. District Court for the Southern District of Alabama. At the conclusion of discovery, Respondent filed a motion for summary judgment. On November 14, 2006, the Trial Court granted Respondent's motion and dismissed Petitioner's complaint with prejudice. On November 21, 2006, Petitioner appealed to the Eleventh Circuit Court of Appeals. On January 23, 2008, the Eleventh Circuit Court of Appeals affirmed the District Court's Summary Judgment, and on March 18, 2008, denied Petitioner's Petition for Rehearing and Petition for Rehearing En Banc. Petitioner filed this Writ of Certiorari in the United States Supreme Court.

STATEMENT OF FACTS

On or about September 19, 2003, Petitioner went to Verizon Wireless situated at 3952 B Airport Blvd, Mobile, AL, and met her spouse, Kilpatrick Ray Taylor. Her spouse desired to obtain a cellular wireless account with Verizon Wireless. Petitioner advised him that it would be expensive to obtain an account with Verizon, and that Cellular South would be cheaper. Petitioner then left the store. Shortly afterwards, she received a telephone call from her spouse requesting that she pay his phone deposit of $165.00. Petitioner went back to the Verizon Store to pay her spouse's requested deposit. She wrote a check payable to Verizon Wireless in the amount of $165.00, and placed in the memo part of the check the phone number that showed up on her caller I D when her

spouse called her, the number being (251) 753-2995. After giving the check to the clerk, Petitioner left. Shortly afterwards, Petitioner received a call from her spouse inquiring as to when she was coming to pay the deposit to Cellular South. She advised him that she had paid the $165.00 deposit to Verizon. She then telephoned the Verizon Wireless Store and advised the clerk of the mistaken payment. The clerk indicated she would see what she could do. After not hearing from the clerk, towards the end of the day Petitioner placed a stop payment on the check. Petitioner went to the Verizon Wireless Store and requested the clerk at the store to return the check to her, but she refused to do so. (CR Doc. 98, Exh. A).

In October, 2003, Appellant received a telephone call from someone from Verizon

Wireless. She explained to the individual how she had mistakenly made a payment to Verizon Wireless. The Verizon Wireless employee on the telephone insisted that she make the check good. Petitioner refused, insisting that she never owed a bill to Verizon Wireless. (CR Doc. 98, Exh. A).

On or about February 18, 2004, Petitioner wrote a check in the amount of $589.00 to Dooney & Burke Inc. (CR Doc. 98, Exh. 1). Dooney & Burke utilized the services of Certegy Check Services, Inc. for clearing checks for approval. (CR Doc. 98, Exh C). The check was returned with a letter and card indicating it was returned due to a Code 1 assessment from Certegy Check Services. (CR Doc. 98, Exhs. 2, 3). In most instances, a Code 1 indicates a prior

dishonored check information in Certegy's file pertaining to the customer. (CR Doc. 98, Exh. C). On or about April 25, 2004, while shopping in a K-Mart Store, Petitioner tendered a check for the payment of merchandise to a cashier in the amount of $37.90. After the check was scanned for check approval, it was declined and on the back of the check was printed a telephone number to call for more information. (CR Doc. 98, Exhibit 4). Petitioner called the number and it was to Certegy Check Services. In speaking to the Certegy employee, Petitioner was told she needed to pay a $165.00 check she had previously written to Verizon Wireless, plus an additional charge of $30.00 for a check fee. On or about April 26, 2004, Appellant wrote a letter to Verizon Wireless seeking for it to

remove all negative matters concerning the $165.00 check from her records and from reporting same, in that she did not owe a bill to Verizon. (CR Doc. 98, Exhs. A, 5). On or about May 3, 2004, while shopping in a K-Mart Store, Petitioner tendered a check for the payment of merchandise to a cashier in the amount of $41.45. After the check was scanned for check approval, it was declined and on the back of the check was printed a telephone number to call for more information, it was the same Certegy Check Services number. (CR 98, Exh A).

For several months prior to writing the check in question to Verizon Wireless, Petitioner wrote numerous checks to various merchants and establishments, none of the checks were

refused or denied acceptance. After writing the check to Verizon, all the above stated checks that were serviced by Certegy were declined and not accepted. (CR 98, Exh. A). The telephone number Petitioner wrote on the check to Verizon Wireless was the phone number for Katrina Broughton. Petitioner never contracted to pay Katrina Broughton's bill, never discussed paying her bill with anyone, and never intended to pay the bill. (CR 98, Exh. A). Katrina Broughton never asked Petitioner or her spouse Kilpatrick Ray Taylor to pay her Verizon Wireless cellular telephone bill, and never told anyone at Verizon Wireless that Petitioner or her spouse was going to pay her bill. (CR 98, Exh. B).

Certegy Check Services provided check authorization services to Verizon Wireless. If

Certegy initially authorized a check, but the check was later returned by the checkwriter's financial institution, Verizon Wireless would submit the check to Certegy for payment as a warranty claim, and Certegy would pay Verizon Wireless the full amount of the check and start a collection process against the checkwriter. Verizon Wireless submitted a claim to Certegy for the $165.00 check Petitioner wrote to Verizon Wireless on September 19, 2003. Included was a photo of the check. The photo of the check was marked NSF/Non Redepositable. (CR 98, Exh D).

Petitioner filed suit against Verizon Wireless under the Fair Credit Reporting Act for defamation and invasion of privacy. At the conclusion of discovery, Respondent filed a motion for summary judgment. The Trial Court

granted Respondent's motion on the grounds that Petitioner's State Law claims for defamation and invasion of privacy were preempted by the Federal Credit Reporting Act. Petitioner appealed to the Eleventh Circuit Court of Appeals. The Eleventh Circuit Court of Appeals ruled that because the statement made by Verizon to Certegy about Petitioner 's check was not false, and because there is no evidence it was made maliciously with intent to injure, Petitioner 's State Law defamation and invasion of privacy claims against Verizon are precluded by Section 1681h(e) of the Fair Credit Reporting Act. As a result of its findings, the Appellate Court did not rule on whether the preemption language in Section 1681t(b)(1)(F) is broad enough to preclude Petitioner's claims.

REASONS FOR GRANTING THE WRIT

THERE ARE SUBSTANTIAL FACTS TO SUPPORT A FINDING BY A JURY THAT THE ACTION OF VERIZON WIRELESS IN SUBMITTING PETITIONER'S CHECK TO CERTIGY FOR COLLECTION, WHEN IT HAD NO LEGAL RIGHT TO COLLECT FOR SAID CHECK, PLACED PETITIONER IN A FALSE LIGHT, AND MANIFESTED A MALICIOUS OR WILLFUL INTENT TO INJURE HER, ACCORDINGLY, PETITIONER'S DEFAMATION AND INVASION OF PRIVACY CLAIMS ARE NOT PRECLUDED BY SECTION 1681h(e) OF THE FAIR CREDIT REPORTING ACT.

The Court of Appeals ruled that because the statement made by Verizon to Certegy about Petitioner's check was not false, and because there is no evidence it was made maliciously with intent to injure, Petitioner's State

Law defamation and invasion of privacy claims against Verizon are precluded by Section 1681h(e) of the fair Credit Reporting Act. The Court did not address whether Verizon had a legal right to seek collection on the check. Petitioner never had an account with Verizon Wireless, and never contracted to pay Katrina Broughton's cellular telephone account with Verizon Wireless. Someone who is not a party to a contract, cannot be bound by the contract. Ex parte Alfa Mut. Ins. Co., 799 So.2d 957 (Ala.Civ.App. 2000); Ex parte Alfa Mut.Ins.Co., 711 So.2d 984 (Ala. 1998). Verizon Wireless had no legal right to retain Petitioner's check after she requested its return. Though Verizon Wireless had no legal right to retain Petitioner's check, and with knowledge that she did not have an account with Verizon Wireless, Verizon Wireless

still furnished Certegy with information concerning the check not being paid and submitted a claim for its payment. Pursuant to Verizon Wireless' contractual agreement with Certegy, Verizon Wireless was aware that Certegy would pay the claim it submitted and seek collection against Petitioner. Verizon, with full knowledge of the facts surrounding Petitioner's check, failed to disclose to Certegy the fact that Petitioner did not have an account with Verizon, and the fact there was no contractual obligation for Petitioner to pay the check. Verizon's intentional failure to apprise Certegy of the foregoing facts, placed Petitioner in a false light by inferring to Certegy that she failed to honor a check owed to Verizon. Certegy, acting without knowledge of the facts surrounding Petitioner's check, paid

Verizon's claim and sought collection against Petitioner, which said action directly and proximately placed Petitioner in a false light with several merchants and acquaintances.

In viewing a summary judgment motion, the evidence of the nonmovant must be believed and all justifiable inferences must be drawn in her favor. Yelderv. Credit Bureau of Montgomery, L.L.C., 131 F. Supp.2d 1275 (M.D. Ala. 2001); Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The evidence as set forth by the Petitioner establishes genuine issues of material fact as to whether Respondent placed Petitioner in a false light, and as to whether Respondent's actions manifested a malicious or willful intent to injure Petitioner, said issues are due to be resolved by

a jury. Accordingly, the summary judgment and dismissal of Petitioner's case are due to be set aside.

II. THERE IS CONSIDERABLE CONFUSION IN THE CIRCUITS AS TO WHETHER THE FAIR CREDIT REPORTING ACT PREEMPTS STATE LAW CLAIMS AGAINST FURNISHERS OF INFORMATION. JUDGES WITHIN THE SAME COURTHOUSE HAVE RULED DIFFEERENTLY ON THE ISSUE. LITIGANTS CONDUCT TIME CONSUMING AND EXPENSIVE LITIGATION ON THE SUBJECT WITH NO REASONABLE DEGREE OF CERTAINTY AS TO HOW A PARTICULAR JUDGE WILL RULE ON THE ISSUE, AND IF APPEALED, HOW THE APPELLATE COURT WILL RULE. A DEFINITIVE APPELLATE RULING IS NEEDED TO CLARIFY THE ISSUE.

For the reasons set forth above, there are

material issues of fact that need to be resolved by a jury, accordingly, the Eleventh Circuit Court of Appeals should have continued its deliberation and ruled as to whether the Fair Credit Reporting Act preempts Petitioner's State Law claims that relate to Verizon Wireless' responsibilities as a furnisher of information to the consumer credit reporting agency, Certegy Check Services. In viewing this issue, courts have held that Section 1681t(b)(1)(F) of the Federal Credit Reporting Act preempts all State Law claims that may arise from a person's furnishing of credit information to a consumer reporting agency, (the position taken by the Trial Judge), whereas Section 1681h(e) only preempts State Law claims in the nature of defamation, invasion of privacy, or negligence to the extent that such claims do not result from

willful or malicious conduct. Section 1681t(b)(1)(F) is not triggered until after a furnisher is notified by a consumer reporting agency of a consumer's dispute, whereas Section 1681h(e) is available at all times. Woltersdorf v. Pentagon Federal Credit Union, 320 F. Supp.2d 1222 (N.D. Ala. 2004); Riley v. Gen. Motors Acceptance Corp., 226 F. Supp.2d 1316 (S.D. Ala. 2002). See also Johnson v. Citimortgage, Inc., 351 F. Supp.2d 1368 (N.D. Ga. 2004). In the instant action, at no relevant time did Certegy notify Verizon Wireless that Petitioner disputed Verizon Wireless' claim against her. Accordingly, Verizon Wireless as a furnisher of information, at no relevant time came under the preemption protections of Section 1681t(b)(1)(F).

Though Section 1681h(e) has never been

officially repealed, the Trial Judge held that Section 1681t(b)(1)(F) of the Federal Credit Reporting Act preempts all State Law claims that may arise from a person's furnishing of credit information to a consumer reporting agency. (Trial Court's Memorandum Opinion and Order in Appendix C).

Conclusion

For all the foregoing reasons, and those related thereto, the summary judgment and dismissal of Petitioner's case are due to be set aside.

As previously set forth, there is considerable confusion as to whether the Fair Credit Reporting Act preempts State Law claims against furnishers of information. A definitive appellate ruling is needed to clarify the issue.

Respectfully submitted,

LARRY C. MOORER
Attorney for Petitioner
107 North Jackson St.
Mobile, AL 36602
(251) 432-0002

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 06-16142-GG

NELLINA L. LOFTON-TAYLOR, Plaintiff-Appellant,

Versus

VERIZON WIRELESS, Defendant-Appellee,

EQUIFAX CREDIT INFORMATION SERVICES, et al.,

Defendants.

On Appeal from the United States District Court for the Southern District of Alabama

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ON PETITION(S)FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before: EDMONDSON, Chief Judge, CARNES and FAY, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court

Appendix A

having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE ORD-42

(2/05)

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 06-16142-GG

District Court
Docket No. 05-00532-CV-CG-B

NELLINA L. LOFTON-TAYLOR,

Plaintiff-Appellant,

versus

VERIZON WIRELESS,

Defendant-Appellee,

EQUIFAX CREDIT INFORMATION SERVICES, et al.,

Defendants.

On Appeal
from the United States District Court for the
Southern District of Alabama

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this court.

Appendix B

Entered: January 23, 2008
For the Court: Thomas K. Kahn, Clerk

By: Harper, Toni

{DO NOT PUBLISH}

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 06-16142

D.C. Docket No. 05-00532-CV-CG-B

NELLINA L. LOFTON-TAYLOR,

Plaintiff-Appellant,

versus

VERIZON WIRELESS,

Defendant-Appellee,

EQUIFAX CREDIT INFORMATION SERVICES, et al.,

Defendants.

On Appeal from the United States District Court for the Southern District of Alabama

---

(January 23, 2008)

Before EDMONDSON, Chief Judge, and CARNES and FAY, Circuit Judges.

PER CURIAM:

The facts of this case are undisputed. On September 19, 2003, Nellina L. Lofton-Taylor, the plaintiff, went to a Verizon Wireless store in Mobile, Alabama to pay the deposit on her husband's cell phone bill. She handed the Verizon employee a $165 check with a phone number written on it, and said that the check should be used to pay her husband's deposit. The Verizon employee said, "okay."

Later that day, Lofton-Taylor's husband called her and said that the deposit still had not been paid on his Verizon account. Lofton-Taylor realized that she had written the wrong phone number on the check she gave to the Verizon employee. She called the Verizon store and told the employee she had spoken with earlier that her check was made out to

the wrong account and she needed to retrieve it. At the same time, Lofton-Taylor told her bank to stop payment on the check she gave to Verizon, and later she filled out a stop payment order.

Verizon deposited Lofton-Taylor's check and credited the account of the Verizon customer whose phone number was written on it. Because of the stop payment order, the check was later returned to Verizon marked, "NSF/Non Redepositable."

Verizon had an agreement with Certegy Check Services, Inc. The agreement provided that Verizon would seek pre-approval from Certegy for any check given to it by a customer. In exchange, if Certegy approved the check and it was later returned for insufficient funds, then Certegy would pay

Verizon for the amount of the check. Certegy would then institute collection proceedings against the issuer of the check. Because Certegy had approved Lofton-Taylor's check, Verizon sent it a copy of the returned check marked "NSF/Non Redepositble."

On February 18, 2004, Lofton-Taylor wrote a check to Dooney & Burke, Inc. The check was returned to her with a letter stating that it had been rejected "due to a Code 1 assessment from Certegy Check Services." On April 25, 2004, K-Mart declined to accept a check from Lofton-Taylor. Certegy's phone number was written on the back of the rejected K-Mart check. When Lofton-Taylor called that phone number, she was told by a Certegy representative that she owed Verizon $165 for the bounced check. The next day,

Lofton-Taylor wrote Verizon a letter asking it to remove any negative matters about her from its records.

On May 3, 2004, Lofton-Taylor again tendered a check to K-Mart that was rejected. The back of her returned check again informed her that she should call Certegy for more information.

Lofton-Taylor then sued Verizon for violating the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq., and her complaint also included state law defamation and invasion of privacy claims.[1] Her complaint alleged that Verizon knew she did not owe it any money, but still willfully reported that she did to

[1] Lofton-Taylor also included Certegy, Trans Union LLC, Equifax Information Services LLC, and Experian Information Solutions, Inc. in her lawsuit, but she voluntarily dismissed those defendants. Verizon is the only defendant remaining.

Certegy, which used the false information to prevent her from writing checks to pay for goods and services.

Verizon moved for summary judgment. As to Lofton-Taylor's Fair Credit Reporting Act claim, Verizon contended that she had not presented any evidence that it had reported the fact that her September 19, 2003 check was returned for insufficient funds to a credit agency. As to the state law claims, Verizon contended that they were preempted by the Fair Credit Reporting Act.

The district court granted summary judgment to Verizon on all of Lofton-Taylor's claims. She does not contend that the district court erred in granting judgment against her insofar as her Fair Credit Reporting Act claim is concerned, so we will not address it. See

McFarlin v. Conseco Servs., LLC, 381 F.3d 1251, 1263 (11th Cir. 2004).

As to Lofton-Taylor's defamation and invasion of privacy claims, the district court agreed with Verizon that they were preempted by the Fair Credit Reporting Act. Lofton-Taylor does contest that part of the judgment.

The Fair Credit Reporting Act provides:

> no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against...any person who furnishes information to a consumer reporting agency...except as to false information furnished with malice or willful intent to injure such consumer.

15 U.S.C. Section 1681h(e). The quoted provision means that where a company furnishes credit information about a consumer to a credit reporting agency pursuant to the

Fair Credit Reporting Act, the company furnishing the information is protected from state law defamation and invasion of privacy claims unless the information it provided was both false and also given with the malicious or willful intent to damage the consumer. See Hood v. Dun & Bradstreet, Inc., 486 F.2d 25, 32 (5th Cir. 1973) ("Furthermore, the Act does not preclude an action is obtained by the complainant pursuant to the provisions of the Act.").

The parties do not dispute: (1) that Verizon is a furnisher of information under the Fair Credit Reporting Act; (2) that Certegy is a consumer reporting agency; and (3) that Verizon was authorized by the Act to provide information about Lofton-Taylor's check to Certegy. The only question on appeal is

whether there is a genuine issue of material fact that the information Verizon furnished to Certegy about Lofton-Taylor's check was false and also was made with malice or willful intent to injure Lofton-Taylor. If there is a genuine issue of material fact about that, summary judgment against the invasion of privacy and defamation claims cannot be granted on § 1681h(e) grounds. If there is no genuine issue of material fact about that, then summary judgment was properly granted in light of § 1681h(e).

Lofton-Taylor's state law claims against Verizon are based solely on the information Verizon communicated to Certegy about her check. All Verizon did was send Certegy the returned check on which the bank had stamped: "NSF/Non Redepositable." There is

no evidence in the record that Verizon communicated anything else to Certegy about the check or Lofton-Taylor. Therefore, all that Verizon told Certegy is that the check had been returned unpaid, with the "NSF/Non Redepositable" stamp on it. There is no evidence that communication was false. All the evidence indicates that it was true. Cf. McCaig v. Talladega Publ'g Co., 544 So.2d 875, 878-79 (Ala. 1989) (affirming summary judgment for defendant on plaintiff's defamation claim because "{t}he undisputed testimony of the parties indicates that facts set out in the article are in their most literal sense true"); Forrester v.WVTM TV, Inc., 709 So.2d 23, 26 (Ala.Civ.App. 1997) (affirming summary judgment for defendant on plaintiff's defamation claim because "{t}he video and

the reporters' corresponding explanations as to what occurred are true in their most literal sense").

Moreover, there is no evidence that the communication Verizon made was done "with malice or willful intent to injure such consumer," in the terms of the statute. Instead, it was done by Verizon with the intent to collect the amount of its check from Certegy pursuant to their contract.

Section 1681h(e), by its terms, protects the truthful statements that furnishers of credit information make to reporting agencies from defamation and invasion of privacy claims by unhappy consumers. See 15 U.S.C. $ 1681h(e). Because the statement made by Verizon to Certegy about Lofton-Taylor's check was not false, and also because there is no evidence it

was made maliciously with intent to injure, Lofton-Taylor's state law defamation and invasion of privacy claims against Verizon are precluded by §1681h(e) of the Fair Credit Reporting Act. As a result, we need not decide whether the preemption language in §1681t(b)(1)(F) is broad enough to also preclude her claims.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

NELLINA L. LOFTON-TAYLOR)

Plaintiff,)

vs. CIVIL ACTION NO.
05-0532-CG-B

VERIZON WIRELESS)

Defendant.)

JUDGMENT

Pursuant to the memorandum opinion and order entered this date granting summary judgment in favor of the only remaining defendant, Verizon Wireless, it is **ORDERED, ADJUDGED**, and **DECREED** that this case is hereby

DISMISSED WITH PREJUDICE.

DONE and **ORDERED** this 14th day of Nov., 2006.

/s/ Callie V.S. Granade
CHIEF UNITED STATES DISTRICT JUDGE

Appendix C

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

NELLINA L. LOFTON-TAYLOR)

Plaintiff,)

vs. CIVIL ACTION NO.
05-0532-CG-B

VERIZON WIRELESS)

Defendant.)

MEMORANDUM OPINION AND ORDER

This cause is before the court on the motion and brief in support of defendant, Verizon Wireless, for summary judgment (Docs. 93, 94), plaintiff's response (Doc.97,98), defendant's reply (Doc. 102), and defendant's motion to strike (Doc. 101). The court finds that plaintiff does not have standing to assert a claim under 15 U.S.C. $1681s-2(a) and has neither stated nor supported a claim under 15 U.S.C. $1681s-2(b) against

Verizon Wireless. The court further finds that all of plaintiff's state law claims are preempted by the Fiar Credit Reporting Act. Therefore, the court finds that defendant's motion for summary judgment is due to be granted and defendant's motion to strike is moot.

FACTS

The complaint in this case alleges that defendant Verizon Wireless ("Verizon") reported to credit reporting agencies adverse information regarding a check written by plaintiff. The complaint asserts claims for (1) violation of the Fair Credit Reporting Act, (2) libel and slander, and (3) invasion of privacy. Three credit reporting agencies were named as defendants in this case, but have been dismissed by agreement of the parties. (Docs. 74,84,88). Verizon Wireless is the only remaining defendant.

On September 19, 2003, plaintiff's husband, Kilpatrick Ray Taylor, telephoned plaintiff and asked her to come to the Verizon store on Airport and McGregor in Mobile, Alabama, to help him get cellular service. (Pl. Depo. P. 47). Plaintiff arrived at the store and told her husband that she would not help him get a joint account because she was not going to sign for a phone that she was not using on a daily basis. (Pl. Depo.pp.49,51). Later, a little after noon, plaintiff received another call from her husband asking her to go to the wireless store and pay his deposit, so he could have service on his phone. (Pl. Depo. Pp. 49,50,51,52). Plaintiff's husband told her he needed a deposit of $165 paid. (Pl. Depo.p. 52). Plaintiff arrived at the Verizon store and told an employee that she was there to pay her husband's deposit. (Pl. Depo. p.

54). Plaintiff wrote the telephone number her husband had just called her from on a check and submitted the check in the amount of $165 to Verizon's store in Mobile, Alabama. (Pl. Depo.p. 53, 54, 57-58). Plaintiff did not tell them who she was, ask for any paperwork, or request any information from Verizon, but just stated that she wanted to pay this amount on her husband's cell phone and that the number was on the check. (Pl.Depo.pp.58-59). The check was already made out before she entered the store. (Pl. Depo. p. 59). The Verizon employee responded by saying "okay". (Pl. Depo. pp. 54, 59).

Verizon had an account for the number written on plaintiff's check, but it was not for plaintiff's husband. The account for that number was under the name of Katrina Broughton. Broughton is a friend of plaintiff's husband. (Pl.

Depo. p. 144).

At about 3:00 o'clock that same afternoon, plaintiff received another call from her husband asking why she had not paid the bill. (Pl. Depo. pp. 50, 60). Plaintiff called the Verizon store and told them she had paid on the wrong bill and needed to get her check back. (Pl.Depo.p.62). Later that day, plaintiff called the bank to stop payment on the check. (Pl.Depo.pp.63-64). She was told she had nine days to come in and sign the paperwork for the stop payment order and she did so within nine days. (Pl. Depo. p. 64). Per plaintiff's instructions, the bank stopped payment on the check. (Pl. Depo. p. 65).

The complaint alleges that Verizon Wireless reported to credit agencies, Certegy Check Services, Inc., Equifax Credit Information Services, Experian and TransUnion, adverse

information concerning plaintiff's check payment and cancellation of the check to Verizon Wireless.

Plaintiff has never been specifically told that her credit was denied because of the $165 check to Verizon. (Pl.Depo.p. 118). She has been denied credit for the information listed in her credit file. (Pl.Depo.p. 118). Plaintiff admits to having had more than 10 overdrafts on her bank account since it was opened in 1990. (Pl.Depo.pp.64-65). She had an account with Fidelity Federal Bank that was placed in collection, but she has since paid it off. (Pl. Depo. pp118-119). Plaintiff also had an account with Ford Motor Credit that was charged off in the amount of $16,021.00. (Pl.Depo.p.119). Plaintiff's credit report from Experian shows four tax liens totaling over $12,000.00. The Experian credit report also reports that plaintiff has an account with CBCS that was

place in collection in January 2006 and that she had an account with GEMB/Dillards in which $822.00 was written off in February 2005. The Experian credit report does not have an entry of any kind for Verizon Wireless.

According to plaintiff, she wrote a check on February 18, 2004, in the amount of $589 to Dooney & Burke Inc. that was returned wioth a letter indicating the return was due to a Code 1 assessment from Certegy Check Services. (Pl. Affid. P 4). Plaintiff also reports that on April 25, 2004, she tendered a check to K-Mart in the amount of $37.90 that was declined after being scanned by the store. (Pl. Affid p5). The returned check had a phone number for Certegy Check services printed on the back to call for more information. (Pl. Affid p5). Plaintiff reports that she called the number and was told that she needed

to pay a $165 check she had written to Verizon Wireless. (Pl. Affid p5). On April 26, 2004, plaintiff wrote a letter to Verizon Wireless requesting that it remove all negative matters concerning the $165 check from her records. (Pl.Affid p5).

Plaintiff also reports that on May 3, 2004, while shopping at K-Mart her check in the amount of $41.45 was declined and the same Certegy Check Services number was printed on the back. (Pl.Affid p6).

Certegy Check Services, Inc. ("Certegy") has an agreement with Verizon Wireless under which Verizon electronically transmits check information to Certegy at the time the check is presented to request authorization from Certegy for warranty coverage. When an approval is initially given, but the check is subsequently returned, Verizon submits the check

to Certegy for payment as a warranty claim. Certegy then pays the full amount of the check and begins the collection process with the checkwriter. (Wood Affid pp3-4). Certegy's records contain a photo of the original check "for payment as a warranty claim". (Wood Affid. P 5). Certegy has not reported any information to Equifax Credit Information Services, Experiean or Trans Union regarding a claim for the Verizon check written by plaintiff. (Wood Affid. P6).

LEGAL ANALYSIS

I. Motion to Strike

Defendant seeks to strike the affidavits of plaintiff and Katrina Broughton, submitted by plaintiff in support of her opposition to the motion for summary judgment. The court finds that the affidavits are not material to the court's determination, as the result would be the same if the affidavits were not considered by the court. Therefore, the court finds that the motion to strike is **MOOT.**

II. Motion for Summary Judgment

A. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) provides that summary judgment shall be granted: "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The trial court's function is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc.,477 U.S.. 242, 249 (1986). "The mere existence of some evidence to support the non-moving party is not sufficient for denial of summary judgment; there must be 'sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.' Bailey v. Allgas, Inc., 284 F.3d 1237, 1243 (11th Cir. 2002) (quoting Anderson, 477 U.S. at 249). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Anderson, at 249. (internal citations omitted).

The basic issue before the Court on a motion

for summary judgment is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." See Anderson, 4777 U.S. at 251-252. The moving party bears the burden of proving that no genuine issue of material fact exists. O'Ferrell v.United States, 253 F.3d 1257, 1265 (11th Cir.2001). In the evaluating the argument of the moving party, the court must view all evidence in the light most favorable to the non-moving party, and resolve all reasonable doubts about the facts in its favor. Burton v. City of Belle Glade, 178 F.3d 1175, 1187 (11th Cir. 1999). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." Miranda v. B&B Cash Grocery Store, Inc., 975 F.2d 1518, 1534 (11th Cir. 1992)(citing

Mercantile Bank & Trust v. Fidelity & Deposit Co., 750 F.2d 838, 841 (11th Cir. 1985).

Once the movant satisfies his initial burden under Rule 56(c), the non-moving party "must make a sufficient showing to establish the existence of each essential element to that party's case, and on which that party will bear the burden of proof at trial." Howard v. BP Oil Company, 32F.3d 520, 524 (11th Cir. 1994)(citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Otherwise stated, the non-movant must "demonstrate that there is indeed a material issue of fact that precludes summary judgment." See Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991). The non-moving party "may not rest on the mere allegations or denials of the {non-moving} party's pleading, but...must set forth specific facts showing that there is a genuine issue

for trial." FED.R.CIV.P 56(e) "A mere 'scintilla' of evidence supporting the [non-moving] party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1992). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp., 475 U.S. 574 at 587 (1986) (internal quotation and citation omitted).

B. FAIR CREDIT REPORTING ACT

"The FCRA reflects Congress's concern with the 'need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." Yang v.

Government Employees Ins. Co., 146 F.3d 1320, 1322 (11th Cir. 1998)(quoting 15 U.S.C.A.$ 1681(a)(4). Plaintiff does not specify in the complaint which provision of the FCRA she contends Verizon has violated. Verizon clearly does not constitute a consumer reporting agency,1 but instead is a "furnisher of information." "In 1996, Congress amended the FCRA to impose duties upon persons who furnish information to credit reporting agencies...See 15

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1 The Fair Credit Reporting Act,-15 U.S.C. $ 1681, et seq. ("FCRA"), defines "consumer reporting agency" as follows:

> [A]ny person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or on part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

15 U.S.C. $ 1681a(f).

U.S.C. $ 1681s-2.

Prior to these amendments, the FCRA did not impose any duties on those furnishing information to credit reporting agencies." Ryan v. Trans Union Corp., 2000 WL 1100440, *(N.D. Ill. 2000).

Plaintiff claims that Verizon violated the FCRA by reporting adverse information to others. Verizon asserts that there has been no violation of the FCRA because the plaintiff has not demonstrated that Verizon made any report to anyone about any credit information of or about the plaintiff. However, assuming Certegy constitutes a consumer reporting agency under FCRA, there is evidence that Verizon applied for warranty coverage from Certegy for nonpayment of plaintiff's check. The affidavit of Certegy's employee, Mary Wood, states that their records contained a photo of the check "for payment as

a warranty claim." While defendant appears to contend that the above statement means it was presented for warranty coverage when it was initially submitted to Verizon, the court, viewing the facts in the light most favorable to plaintiff, understands the statement to mean that when the check was denied, Verizon made a claim on Certegy's warranty seeking payment from Certegy for the $165. Thus, there is evidence that Verizon reported to Certegy that plaintiff's $165 check was "no good". 2

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2 The court notes that the parties dispute whether the information furnished was accurate. Although plaintiff had in fact stopped payment on the check, plaintiff had no account with Verizon and owed no money to Verizon. The court also notes that whether or not the information reported was accurate is
irrelevant as to any liability under certain portions of the FCRA. Section 1681s2(b) duties exist regardless of whether the disputed information is later determined to be accurate. A substantive investigation is required irrespective of

Defendant further asserts that neither Verizon, nor Certegy reported any information to Equifax, Experian, or Trans Union. However, Verizon did report information to Certegy. A report from a check approval company is a consumer report under §1681a(d)3. See Estiverne v. Sak's Fifth

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accuracy. Abbett v. Bank of America, 2006 WL 581193, *4(M.D. Ala. March 8, 2006).

3 " Consumer report" is defined in the FCRA as follows:

> The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for –
>
> (A) credit or insurance to be used primarily for personal, family, or household purposes;
>
> (B) employment purposes; or
>
> (C) any other purpose authorized under section

Avenue, 9 F.3d 1171, 1173-74 (5th Cir. 1993)(citations omitted). Thus, there is evidence that Verizon furnished information to a consumer reporting agency.

Defendant also contends that plaintiff has no standing to prosecute this action under §1681s-2(a) of the FCRA. The court agrees that the FCRA does not provide a federal private right of action under §1681s-2(a). See §1681s-2(c)(1) ("...sections 1681n and 1681o of this title do not apply to any violation of-(I) subsection, including any regulations issued thereunder..."). Courts have routinely held that §1681s-2(a) may be enforced only by the government as provided in the statute

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1681b of this title.

15 U.S.C.A. §1681a(d). The FCRA contains some exclusions and restrictions to the above definition which are not applicable here.

even though it creates an affirmative obligation to refrain from reporting inaccurate information. See Riley v. General Motors Acceptance Corp., 226 F.Supp.2d 1316, 1319 (S.D. Ala. 2002) ("Thus, because he is not the Attorney General of Alabama or an appropriate federal official, the plaintiff has no standing to allege claims under 1681s-2(a)") (citations omitted); see also Abbett v. Bank of America, 2006 WL 581193, *5 (M.D. Ala. March 8, 2006); Acosta v. Campbell, 2006 WL 146208, *13 (M.D. Fla. January 18, 2006). Therefore, plaintiff lacks standing to pursue any claim under Section 1681s-2(a).

However, plaintiff's complaint did not specify under which section of the FCRA her claims arise. Plaintiff alleges only that defendant's "reporting of adverse information" violated the FCRA. The only provision under

which plaintiff could allege a private right of action against Verizon, as a furnisher of information, is Section 1681s-2(b). See Nelson v. Chase Manhattan Mortgage Corp., 282 F.3d 1057, 1059-60 ((th Cir. 2002) (Through Section 1681n and Section1681o, the FCRA provides a private right of action for violations of $1681s-2(b).).

Section 1681s-2(b) requires that, upon receipt of a notice of dispute from a credit reporting agency, a furnisher of information is required to conduct an investigation, review relevant information provided by the credit reporting agency, report the results of the investigation, and, in the event the investigation determines that the information is either incomplete or inaccurate, report those results to all agencies to whom the furnisher reports such information. 15 U.S.C. $ 1681s-2(b)(1)(A)-(D). A

prerequisite for a claim under $ 1681s-2(b) is that Verizon, as the furnisher of information, received notice of a dispute from Certegy. See 15 U.S.C. $$ 1681i, 1681s-2(b). Plaintiff has presented no direct evidence that Certegy notified Verizon of a dispute. Plaintiff reports calling Certegy after her $37.90 check to K-Mart was declined, but that was not until at least April 25, 2004. Pursuant to $1681i, Certegy then had five business days to notify Verizon. 15 U.S.C. $1681i-a(2)(A). A reasonable reinvestigation and recording of the current status of the disputed information or deletion of the item from the file should occur within 30 days from receipt of the notice from the consumer. 15 U.S.C. $1681i-a(1)(A). Plaintiff only provided evidence of one check, subsequent to her call to Certegy, that was declined. However, that check declination occurred on May 3, 3004,

only 8 days after plaintiff's call to Certegy. Verizon's duty to investigate and then report results to Certegy would not arise until it receives such notice of the dispute from Certegy. See Abbett, 2006 WL 581193 at *3("To prevail on a §1681s-2(b) claim, Mr. Abbett must show that a CRA notified the furnisher of information about the consumer's dispute pursuant to §1681i(a)(2). This notice triggers the furnisher's duties under §1681s-2(b)."); Young v. Equifax Credit Info. Serv., 294 F.3d 631, 639(5th Cir. 2002)(duty arises only after receiving notice of a dispute from a credit reporting agency). Moreover, plaintiff does not indicate whether she informed Certegy when she called that hse disputed the information. Notably, plaintiff did not allege in her complaint that Certegy notified Verizon of the dispute or that Verizon hfailed to investigate the dispute or

report its findings to Certegy. In addition, plaintiff argues in her response with regard to the issue of preemption that "at no time did Certegy notify Verizon Wireless that Plaintiff disputed Verizon Wireless' claim against her." (Doc. 98, p.6).

The court finds that the factual evidence is insufficient for a reasonable juror to find that plaintiff's injuries resulted from Verizon's failure to investigate and report the results after receiving notification from Certegy of a dispute. Thus, the court finds that summary judgment should be granted in favor of defendant as to plaintiff's FCRA claim. See Acosta v. Campbell, 2006 WL 146208, at*13n 12 ("Although Acosta could bring a private action under $1681s-2(b), which imposes additional duties once the furnisher of information receives notice of the consumer's dispute from a credit reporting agency, he has not alleged that

he contacted the credit reporting agencies to dispute the foreclosure, or that the credit reporting agencies notified CitiMortgage that Acosta was disputing the debt.")

C. State Law Claims

Counts Two and Three of plaintiff's complaint assert claims for libel, slander and invasion of privacy. Defendant argues that all of plaintiff's state law claims are preempted under the FCRA. The FCRA contains express preemption provisons: 15 U.S.C. $$ 1681t(a) and 1681t(b)(1)(F). Section 1681t(a) provides the following:

> (a) In general
> Except as provided in subsections (b) and (c) of this section, this subchapter does not annul alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

Section 1681t(b)(1)(F) provides:

> (b) General exceptions
> No requirement or prohibitions maybe imposed under the laws of any State—
> (1)with respect to any subject matter regulated under—
> (F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply [to two statutory exemptions concerning Massachusetts and California].

The Middle District of Alabama recently stated that the above preemption provision mandates "compliance with state laws with two exceptions: (1) where state laws are inconsistent with the FCRA; and (2) where a State has imposed a requirement or prohibition on furnishers of information to [credit reporting agencies.]" Abbett, 2006 WL 581193 at *5. The Middle District of Alabama therefore concluded that because there is no private right of action against furnishers

of information for making inaccurate reports, "[a]llowing any private state law action to proceed against a furnisher of information based on violations of duties established by $1681s-2(a) is inconsistent with the FCRA." Id. This court adopts that analysis, and finds that all of plaintiff's state law claims in the instant case are preempted to the extent they are based on the furnishing of inaccurate information.4

The Middle District of Alabama's conclusion in Abbet is consistent with this court's previous ruling in Riley:

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4 The court found above that plaintiff has failed to support a claim under $1681s-2(b) for Verizon's failure to investigate and report the results after receiving notification from Certegy of a dispute. Moreover, the allegations of plaintiff's state law claims are based on duties established by $ 1681s-2(a), rather than $ 1681s-2(b). Both counts Two and Three state that the claim is based on the "reporting of adverse information against Plaintiff's credit report, knowing that Plaintiff owed no debt and never had an account with Verizon Wireless." (Complaint pp 25, 28).

> The court finds no reported authority confronting the first issue before this court: an allegation that violations of $ 1681s-2(a) form the basis for state law "negligence per se or intentional tort, per se" claims. Either no federal court has confronted a similarly pled complaint or the proposition is so fundamental that no court has bothered to publish on the issue. In any case, this court holds that where the plaintiff has no private cause of action under $1681s-2(a),the plaintiff cannot allege violations of 1681s-2(a) as the basis for state law claims.

Riley, 226 F. Supp.2d at 1320. 5

Plaintiff argues that $1681t(b)(1)(F) does not apply to this case, but instead that the older provision, $1681h(e) applies. The older provision

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5 In Riley, this court also addressed whether $ 1681t(b)(1)(F) preempted the plaintiff's state law claims which were based on violations of duties established by $1681s-2(b). Riley, 226 F.Supp.2d at 1320-25. In fact, this court noted that the plaintiff in Riley only alleged conduct by the defendants that occurred after defendant received notice from the credit reporting agencies of a discrepancy. Id. At 1325. This court held that the plaintiff's state law claims based on the alleged furnishing of inaccurate information to credit reporting agencies in violation of 15 U.S.C. $1681s-2(b) are completely preempted by 15 U.S.C. $ 1681t(b)(1)(F). Id.

states the following:

(e) Limitation of liability

Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report except as to false information furnished with malice or willful intent to injure such consumer.

15 U.S.C.A. §1681h(e). The district courts within this circuit are split as to the application of these two FCRA preemption statutes in cases such as this, and this court is aware of no Eleventh Circuit analysis of this issue. The Northern District of Alabama has explained the dichotomy between these two provisions and the split of authority among courts concerning their applicability as

follows:

The newer $1681t(b)(1)(F) is broader than the older $1681h(e) in that it preempts all state law claims that may arise from a person's furnishing of credit information to a consumer reporting agency, whereas 1681h(e) only preempts state law claims"in the nature of defamation, invasion of privacy, or negligence" to the extent that such claims do not result from willful or malicious conduct. But the newer $1681t(b)(1)(F) is also more narrow than the older $1681h(e) in that the protections of the newer $1681t(b)(1)(F) are not triggered until after afurnisher is notified by a consumer reporting agency of a consumer's dispute, whereas the older $1681h(e) protection are available at all times. See infra at n. 1-3. In other words, the protection of $1681t(b)(1)(F) is limited by $ 1681s-2(b)(1) which sets forth the duties of a furnisher of credit information. This cumbersome. Overlap of the newer $ 1681t(b)(1)(F) and the older $ 1681h(e) has resulted in disagreement among courts about how best to harmonize the two in application. Riley v. Gen. Motors Acceptance Corp., 226 F.Supp.2d 1316, 1324 (S.D.Ala. 2002)(discussing the various approaches to analyzing the two provisions).

The courts that have wrestled with the issue at bar have reached differing results. Some have concluded, as defendant urges this court to conclude, that there is complete preemption of state law claims. In other words, these courts hold that the newer language ($ 1681t(b)(1)(F) supercedes the older ($1681h(e)) altogether, and

thus all state law causes of action relating to the duties of persons who furnish information to consumer credit reporting agencies are preempted by the newer $ 1681t(b)(1)(F). See e.g., Purcell v. Universal Bank, N.A., 2003 WL 1962376,*5(E.D.Pa. April 28, 2003); Hasvold v. First USA Bank, N.A., 194 F.Supp.2d 1228, 1239(D. Wyo. 2002); Jaramillo v. Experian Info. Solutions, Inc., 155 F.Supp.2d 356, 361-62 (E.D.Pa. 2001); Carney v. Experian Info. Solutions, Inc., 57 F. Supp.2d 496, 503(W.D.Tenn. 1999). According to these courts, no state law tort claims relating to the furnishing of information to a consumer reporting agency are ever permissible, regardless of whether the claims involve conduct before or after the furnisher of information received notice of a dispute from a consumer reporting agency.

Other courts have held that the newer $1681t(b)(1)(F) preemption provision is more limited in scope. Relying on the plain language of the statute, these courts hold that state law tort claims are preempted by the newer $ 1681t(b)(1)(F) only if they involve conduct by the Furnisher of credit information after that furnisher was made aware that the information was false or disputed by a consumer reporting agency. See, e.g. Stafford v. Cross Country Bank, 262 F. Supp.2d 776 (w.d.Ky.2003); Aklagi v.Nations Credit Fin. Serv. Corp., 196 F. Supp.2d 1186, 1194-95 (D.Kan.2002); see also Riley, 226 F. Supp.2d at 1324.

Woltersdorf v. Pentagon Federal Credit Union, 320

F.Supp.2d 1222, 1224-25 (N.D. Ala. 2004)

(footnotes omitted). The Northern District of Alabama followed the second line of reasoning, finding that "the absolute bar of the newer $ 1681t(b)(1)(F) applies only after a consumer reporting agency notifies the furnisher of credit information of a consumer dispute." Id. At 1226.

After considering the relevant case law, the court is persuaded by the Middle District of Alabama's analysis and by this court's prior findings in Riley that allowing any private state law action to proceed against defendant based on violations of duties established by $1681s-2(a) is inconsistent with the FCRA. Accordingly, the court holds that all of plaintiff's state law claims are preempted because they are based on the allegation that defendant furnished inaccurate information to Certegy.

CONCLUSION

For the reasons stated above, the motion of Verizon Wireless for summary judgment (Docs. 93, 94) is **GRANTED**, and the motion of Verizon Wireless to strike (Doc. 101) is **MOOT**.

DONE and **ORDERED** this 14th day of November, 2006.

/s/ Callie V.S. Granade
CHIEF UNITED STATES DISTRICT JUDGE

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(2)

No. 08-257

Supreme Court, U.S.
FILED
SEP 23 2008
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

NELLINA L. LOFTON-TAYLOR,

Petitioner,

v.

VERIZON WIRELESS PERSONAL COMMUNICATIONS L.P.

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

ANDREW G. MCBRIDE
Counsel of Record
MEGAN L. BROWN
WILEY REIN LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000

Counsel for Respondent

September 29, 2008

218476

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the Eleventh Circuit erred in concluding that Petitioner's claims were preempted by the Fair Credit Reporting Act.

RULE 29.6 DISCLOSURE

Pursuant to Supreme Court Rule 29, the Respondent provides the following corporate disclosure:

1. Verizon Wireless Personal Communications L.P. ("Verizon Wireless") is a Delaware general partnership. Verizon Wireless has two partners, Verizon Wireless South Area LLC and Southern & Central Wireless, LLC. Both partners are limited liability companies wholly owned by Cellco Partnership.

2. Cellco Partnership has seven partners. Five of the partners, representing 55% of the interest in Cellco, are ultimately owned by Verizon Communications Inc. ("Verizon"). These partners are: Bell Atlantic Cellular Holdings, L.P.; NYNEX PCS Inc.; PCSCO Partnership; GTE Wireless Incorporated; and GTE Wireless of Ohio Incorporated (collectively, the "Verizon Partners"). None of the Verizon Partners is publicly held. Two of the partners, representing 45% of the interest in Cellco, are ultimately owned by Vodafone Group Plc ("Vodafone"). These partners are: PCS Nucleus, L.P. and JV PartnerCo, LLC (collectively, the "Vodafone Partners"). None of the Vodafone Partners is publicly held.

3. Verizon is a publicly held Delaware corporation. Vodafone is a publicly held British corporation. Neither Verizon nor Vodafone has a parent company, and no publicly held company has a 10% or greater ownership in either entity.

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STATUTORY PROVISIONS INVOLVED

The full texts of 15 U.S.C. §§ 1681h(e) and 1681t(b)(1)(F), which provide for preemption of certain state laws related to credit reporting, are attached hereto as Appendix A and B.

STATEMENT OF THE CASE

A. Relevant Facts

Distilled to the most essential, the operative facts in this case are straightforward. On September 19, 2003, Petitioner provided Verizon Wireless with a check in the amount of $165.00, and wrote a cell phone number on the check. Pet'r App. C 3.[1] Petitioner stated to the Verizon Wireless representative at the store that she wanted to pay this amount on her husband's cell phone account and that the number was on the check. *Id.* Verizon Wireless had an account associated with the number provided, in the name of another subscriber who was a friend of Petitioner's husband. *Id.* Later that day, Petitioner learned that her husband had opened his account with a different wireless carrier, and she placed a stop-payment order on the check she had provided to Verizon Wireless. *Id.* at 4.

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1. The Petition contains three unpaginated Appendices labeled A, B and C, which will be cited herein as Pet'r App. A, B or C. Respondent will try to cite to the pages of the Appendices as accurately as possible, rather than reproducing the materials herein.

The check subsequently was returned to Verizon Wireless, unpaid and marked by her bank "NSF/Non Redepositable." Pet'r App. B 3. Verizon Wireless transmitted the returned check to Certegy Check Services, Inc., which provided check authorization services to Verizon Wireless and was under contract to make a warranty payment to Verizon Wireless for any check that it approved but was later returned unpaid. *Id.* at 3-4.

B. Proceedings Below

On September 19, 2005, Petitioner brought Fair Credit Reporting Act ("FCRA") and state defamation and invasion of privacy claims, seeking $5,000,000 against Verizon Wireless and several other defendants who were voluntarily dismissed, for reporting allegedly inaccurate adverse information against Petitioner's credit by transmitting the unpaid check to Certegy.

The District Court concluded that Petitioner failed to state a claim under the FCRA and that her state law claims were preempted by Section 1681t(b)(1)(F) of the FCRA as a matter of law. Pet'r App. C 11-15. In doing so, the district court noted some divergence between district courts about the scope and proper interpretation of Section 1681t(b)(1)(F), and adopted the broader view of the section adopted by some district courts. *Id.* at 12-14.

On Petitioner's appeal of only the preemption decision, the Eleventh Circuit, in an unpublished opinion released on January 23, 2008, affirmed. Pet'r App. B. The Eleventh Circuit concluded that because Verizon

Wireless's provision of information (a cancelled check stamped "NSF/Non Redepositable") to Certegy was not false, and because there was no evidence that the provision was made maliciously with intent to injure, Section 1681h(e), FCRA's other preemption provision, which provides a qualified immunity to furnishers of information, precluded the state law claims. *Id.* at 6-8. The Eleventh Circuit stated that based on its application of Section 1681h(e), it "need not decide whether the preemption language in § 1681t(b)(1)(F) is broad enough to also preclude her claims." *Id.* at 8.

Petitioner on February 13, 2008 sought panel rehearing and rehearing en banc, which were denied on March 18, 2008. Pet'r App. A. Petitioner filed this Petition for a writ of certiorari on June 16, 2008.

In asking this Court to grant a writ of certiorari, Petitioner seeks relief from the Eleventh Circuit's application of Section 1681h(e) of the FCRA, which provides a qualified immunity to furnishers of credit information unless the information furnished is false and provided with malice or willful intent to injure. Though not identified as a "question presented" in the Petition, Petitioner also invites this Court to reach out and offer its views on the scope of Section 1681t(b)(1)(F)'s preemption, an issue not addressed by the Eleventh Circuit, or by any other Circuit to date, in order to provide guidance to federal district courts around the nation. *See* Pet. 15-18. For the reasons detailed below, this Petition should be denied.

INTRODUCTION AND SUMMARY OF REASONS TO DENY THE PETITION

Petitioner asks this Court to grant certiorari to review and reverse the Eleventh Circuit's factual findings and application of Section 1681h(e) to those facts, in order that this Court can then reach a second issue and provide "a definitive appellate ruling," Pet. 18, on the scope of Section 1681t(b)(1)(F) of the FCRA. The proper scope of that provision, however, is a question of law neither squarely presented in the decision below nor necessary to resolve the case at bar, and on which no Circuit Court has yet definitively ruled. This Court should decline each of Petitioner's invitations.

As to whether this Court need offer its guidance on the scope of Section 1681t(b)(1)(F), Petitioner's only asserted basis for review is an apparent interpretive disagreement between some district courts over the provision. But no conflict is alleged that would satisfy Supreme Court Rule 10. In fact, the Circuit Courts have yet to address the legal question raised, which is at this very moment wending its way through the federal system. What is more, even if review and clarification by this Court were appropriate, this case is a poor vehicle for addressing Section 1681t(b)(1)(F), because the decision below rested on an independent and adequate ground, namely FCRA's other preemption provision, Section 1681h(e).

As to whether the Eleventh Circuit erred in its application of Section 1681h(e) to the facts of this case, none of this Court's traditional criteria for certiorari are pled or satisfied. No conflict is alleged, and no credible case is made that the Eleventh Circuit's conclusion was in error. The Eleventh Circuit found that there was no genuine issue of material fact as to whether Verizon Wireless provided false information with malice or intent to injure. Not only is this sort of fact-weighing typically eschewed by this Court, the Eleventh Circuit's answer to that question, and the lower courts' preemption analyses, were correct.

Simply put, Petitioner provides no basis for this Court to review and reverse the Eleventh Circuit's straightforward application of Section 1681h(e) to the facts of this case. Nor does she offer any reason for the Court to reach out and decide questions of statutory interpretation that were unaddressed in the decision on review, are still percolating in the lower courts, and have yet to be addressed squarely by any Court of Appeals. This Petition is meritless, premature, and should be denied.

REASONS FOR DENYING THE PETITION

I. This Case Is a Poor Vehicle for Addressing the Legal Issues on Which Petitioner Seeks Guidance.

A. The Eleventh Circuit Properly Resolved the Case on Alternate, Narrower Grounds.

The ultimate legal issue on which Petitioner seeks this Court's guidance – the scope and meaning of Section 1681t(b)(1)(F), including its relationship to Section 1681h(e) – is not squarely presented or even at issue in this case. This case was properly disposed of by the Eleventh Circuit on narrower and simpler grounds. Specifically, the Eleventh Circuit applied the preemption provision in Section 1681h(e), rendering any analysis under Section 1681t(b)(1)(F) unnecessary and purely advisory. *See* Pet'r App. B 8.

The disposition of this case under Section 1681h(e) was manifestly appropriate. Indeed, Petitioner's own "question presented" focuses this Court's attention exclusively on "[w]hether there are substantial facts to support a finding by a jury that the action of Verizon Wireless . . . placed Petitioner in a false light, and manifested a malicious or willful intent to injure her . . . under Section 1681h(e)." Pet. i. Petitioner concedes that Section 1681h(e) "is available at all times," and "preempts State Law claims in the nature of defamation, invasion of privacy, or negligence to the extent that such claims do not result from willful or malicious conduct." Pet. 16-17. Thus, unless she can convince this Court that the Eleventh Circuit made erroneous factual findings or misapplied what was a properly stated rule of law, the decision below must stand.

What is more, even if Petitioner could show that the Eleventh Circuit improperly applied Section 1681h(e), she would still not likely secure the broad legal guidance sought, as this Court would likely remand to the Eleventh Circuit for consideration in the first instance of the scope of Section 1681t(b)(1)(F) and its application to the facts of this case.

For the foregoing reasons, this Petition presents a poor vehicle for resolution of the legal and factual issues raised by Petitioner.

B. This Case Satisfies None of the Traditional Criteria for Review by this Court.

The Petition meets none of the criteria of Supreme Court Rule 10, and should be denied on that ground alone. Though Petitioner states there is "confusion in the Circuits," Pet. 15, about the scope of the FCRA's preemptive force, what she really alludes to is a divergence in interpretation between some federal district courts on a legal question that is, as noted above, irrelevant to the disposition of this case. No Court of Appeals has yet weighed in on the statutory question Petitioner urges this Court to take up, and as such, the Petition presents not even a hint of the sort of intolerable conflict that warrants this Court's attention. *See, e.g.*, *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393 (1923) (dismissing writ of certiorari as improvidently granted because case involved no "real and embarrassing conflict of opinion and authority between the circuit courts of appeal.")

Petitioner cites no Court of Appeals or Supreme Court case that is in conflict with the decision under review, or with any other Court of Appeals, for that

matter. Petitioner cannot cite any relevant conflict because no Circuit Court yet has addressed the question of the relationship between Sections 1681t(b)(1)(F) and 1681h(e), or the question of Section 1681t(b)(1)(F)'s meaning more generally.[2] Like the Eleventh Circuit in the case at bar, the only other Court of Appeals facing the issue found alternative, narrower avenues to resolve the case before it. *See Beyer v. Firstar Bank, N.A.*, 447 F.3d 1106, 1108 (8th Cir. 2006) (concluding that with respect to "the scope and interplay of the FCRA's preemption provisions . . . [w]e find it unnecessary to address the preemption issue because we can decide the case on a much simpler basis," namely the lack of "evidence from which a reasonable jury could have determined that the report was false"); *see also* Pet'r App. B 8 ("As a result [of the court's conclusion under Section 1681h(e)] we need not decide whether the preemption language in § 1681t(b)(1)(F) is broad enough to also preclude her claims.").

Any "confusion" that exists is really nothing more than divergence between district courts as to the appropriate interpretive methodology for evaluating

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2. Indeed, though the Petitioner desires an opinion explaining the preemptive force of the FCRA Section *not* addressed by the Eleventh Circuit, she does not and cannot even allege a conflict with respect to the preemption provision that the lower court *did* address. The Eleventh Circuit's conclusions with respect to Section 1681h(e) are perfectly consistent with other Circuits' applications of that section, *see, e.g., Young v. Equifax Credit Information Services, Inc.*, 294 F.3d 631, 638 (5th Cir. 2002) ("The FCRA preempts state law defamation or negligent reporting claims unless the plaintiff consumer proves 'malice or willful intent to injure' him." (citations omitted)), and Petitioner does not allege otherwise.

Sections 1681h(e) and 1681t(b)(1)(F). *See, e.g., Beyer*, 447 F.3d at 1108 ("District courts have come to different conclusions about the scope and interplay of the FCRA's preemption provisions, 15 U.S.C. § 1681h(e) and § 1681t(b)(1)(F)."). These trial court disagreements are not ripe for resolution by this Court and do not constitute the type of conflict that justifies this Court's grant of certiorari.

Indeed, the preemptive scope of the FCRA, including any disagreement about the interplay between Sections 1681h(e) and 1681t(b)(1)(F), is being considered in pending litigation and may soon reach a Court of Appeals for resolution. For example, in *Ross v. Washington Mutual Bank*, No. 5:06-CV-468-D, 2008 WL 2620174 (E.D.N.C. July 2, 2008) (finding no conflict between Section 1681h(e) and Section 1681t(b)(1)(F), and concluding that summary judgment to bank under Section 1681t(b)(1)(F) was appropriate), the plaintiff on July 31, 2008 filed a notice of appeal to the Fourth Circuit (No. 08-1851). In a more recent decision from the District of Maine, *Donovan v. Bank of America*, No. 07-168-P-H, 2008 WL 4061073, at *7 n. 74 (D. Me. Aug. 29, 2008) (granting summary judgment to bank under Section 1681h(e), and noting but not addressing "an argument for complete preemption under 15 U.S.C. § 1681t(b)(1)(F)"), a notice of appeal may be filed as well. Because the Courts of Appeals are likely to have occasion to address the very issues on which Petitioner seeks this Court's opinion, certiorari is even less appropriate at this time.

The closest Petitioner comes to identifying any of the traditional criteria for certiorari is where she states that due to the lack of appellate guidance, litigants are forced to conduct time consuming and expensive litigation without a "reasonable degree of certainty as to how a particular judge will rule . . . [and] how the appellate court will rule." Pet. 15. However, in the absence of any conflict over relevant legal authority, the possibility that future plaintiffs may litigate without precise certainty as to which preemption theory a court may apply to unknown cases is not an issue of national importance that would justify this Court's attention at this time.

IV. The Courts Below Correctly Applied the FCRA to Conclude that Petitioner's Claims are Preempted.

A. The Court of Appeals Correctly Concluded that Section 1681h(e) Preempts Petitioner's State Law Defamation and Invasion of Privacy Claims.

In order to obtain the relief she seeks, Petitioner must convince this Court that the Eleventh Circuit erred in finding that there were no genuine issues of material fact as to whether the information furnished by Verizon Wireless to Certegy was false and provided with malice or willful intent to injure. Indeed, she asks this court to review the facts evaluated by the lower court and "set aside" the findings below. Pet. 15.

This Court does not sit to review mere error below. Sup. Ct. R. 10. Indeed, the proper application of Section 1681h(e) to the particular claims at issue, or the factual

details underlying the preempted claims, are not the types of questions that typically concern this Court. But even if it were to sit in such review here, the Eleventh Circuit's application of Section 1681h(e) was correct and should be affirmed.

Section 1681h(e) provides in relevant part:

> [N]o consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency . . . *except as to false information furnished with malice or willful intent to injure such consumer.*

15 U.S.C. § 1681h(e) (emphasis added). The parties and the Eleventh Circuit below agree that the relevant part of this section is the last part,[3] carving out an exception to the general immunity from suit, for false information produced maliciously.

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3. Petitioner focuses on this language and the Eleventh Circuit's conclusion that there was no genuine issue of material fact on the question of falsity or malice. *See* Pet. 11-15. What is more, she states that Section 1681h(e) "preempts State Law claims in the nature of defamation, invasion of privacy, or negligence to the extent that such claims do not result from willful or malicious conduct," Pet. 16-17, and notes that "Section 1681h(e) is available at all times," Pet. 17.

Because Petitioner has not shown that Verizon Wireless provided false information or did so with any malice, Section 1681h(e) bars her state law claims as a matter of law. As the Eleventh Circuit explained, Petitioner's state law claims are based solely on the information Verizon Wireless communicated to Certegy, specifically, the transmittal of the returned check, stamped "NSF/Non Redepositable," that Petitioner had provided to it. There is no evidence that any part of the communication, including the stamp, was false. In fact, it is objectively true: Verizon Wireless reported to Certegy that a check submitted to Verizon Wireless had been returned unpaid. This obligated Certegy to pay Verizon Wireless for the amount of the check, which it previously had approved. The Petition alleges that Verizon Wireless failed to apprise Certegy of additional, allegedly relevant facts concerning its relationship to Petitioner, which "placed Petitioner in a false light by inferring to Certegy that she failed to honor a check owed to Verizon." Pet. 13. Petitioner's statement that she had no account with Verizon Wireless, and thus did not owe Verizon Wireless any money, is of no moment in evaluating the falsity of the transmitted check. That check accurately conveyed correct information, namely that the check had been returned to Verizon Wireless as unpaid. Thus, the lower court was correct in concluding that there is no genuine issue of material fact on the falsity prong of Section 1681h(e)'s exception.

Nor is there any evidence – and certainly no genuine issue of material fact – that Verizon Wireless transmitted the returned check with any malice or intent to injure. Verizon Wireless simply sought to collect the amount of the returned check from Certegy pursuant to their

contract. The Petition offers the Court no evidence to contradict the lower court's conclusion and simply repeats Petitioner's conclusory assertion that there is a genuine issue of material fact on this point. Pet. 14-15. But much more is needed to show malice. *See, e.g.*, *Morris v. Equifax Info. Serv., Inc.*, 457 F.3d 460, 471 (5th Cir. 2006) (concluding plaintiff failed to present evidence "that Equifax published false statements about Morris knowing the statements were false or with a reckless disregard of whether they were false" where there was no showing that "the defendant in fact entertained serious doubts as to the truth of his publication." (citation omitted). Because Petitioner utterly fails on this score, she cannot establish malice or willful intent to injure her and thus cannot bring her state law claims within the exception to Section 1681h(e)'s immunity. The Eleventh Circuit correctly concluded that Section 1681h(e) precluded Petitioner's state law claims as a matter of law.

B. The District Court Correctly Held that Petitioner's Claims for Defamation and Invasion of Privacy are Preempted by Section 1681t(b)(1)(F).

Finally, in the unlikely event that this Court (1) deems this case worthy of certiorari, (2) concludes that the Eleventh Circuit erred in finding no genuine issue of material fact as to the applicability of Section 1681h(e), (3) decides not to remand to the Eleventh Circuit for consideration of FCRA's other preemption provision, and (4) itself addresses the scope of Section 1681t(b)(1)(F), it should affirm the district court.

The plain language of the FCRA preempts Petitioner's state law claims. Section 1681t(b)(1)(F) provides that:

> No requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under . . . section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies . . . .

15 U.S.C. § 1681t(b)(1)(F).[4] This is consistent with the statement in Section 1681t(a), which provides for preemption of "the laws of any State with respect to the collection, distribution, or use of any information on consumers . . . to the extent that those laws are inconsistent with any provision of this subchapter . . . ." 15 U.S.C. § 1681t(a).

Plaintiff's state law claims clearly relate to allegations about Verizon Wireless's "furnish[ing] [of]

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4. Section 1681s-2 lays out two standards governing conduct, only one of which is enforceable through a private right of action. Section 1681s-2(a) establishes duties applicable to furnishers of information generally, without regard to whether the furnisher was on notice of a dispute by a consumer about the accuracy of the information. Section 1681s-2(b) imposes duties on furnishers once they are on notice of a factual dispute about information they have provided. Only Section 1681s-2(b) is privately enforceable. *See* 15 U.S.C. §§ 1681s-2(c), (d); *see, e.g., Saunders v. Branch Banking & Trust Co.*, 526 F.3d 142, 149 (4th Cir. 2008) ("FCRA explicitly bars private suits for violations of § 1681s-2(a), but consumers can still bring private suits for violations of § 1681s-2(b).").

information to consumer reporting agencies," *id.* § 1681t(b)(1)(F), were predicated on duties established by Section 1681s-2, and thus were properly held preempted by the district court.

In so concluding, the district court noted a divergence of authority between the Northern and Middle Districts of Alabama as to the scope of Section 1681t(b)(1)(F). *See* Pet. App. C 6-7. Essentially, the Northern District has taken the view that Section 1681t(b)(1)(F) preempts only those state tort claims that involve conduct regulated by Section 1681s-2(b), namely conduct occurring *after* a furnisher is made aware of a consumer dispute. The Middle District has taken the view that Section 1681t(b)(1)(F) preempts *all* state tort claims relating to the furnishing of information, *regardless* whether the claims involve conduct before or after the furnisher is made aware of a dispute, namely conduct regulated by Section 1681s-2(a) and (b). After laying out the disagreement, the district court, persuaded by the reasoning of the Middle District and following an earlier decision from its own court, concluded that allowing Petitioner's state law claims – which were based on duties established by Section 1681s-2(a) – to proceed would contravene the FCRA. The district court's reasoning was simple and correct: because Petitioner's state law claims are predicated on the duties established by Section 1681s-2(a), they are preempted.

This reading of the statute is compelled by the plain text of Section 1681t(b)(1)(F), which provides, "[n]o requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under . . . section 1681s-2 . . . ."

Section 1681t(b)(1)(F) makes no distinction between the two subsections of Section 1681s-2, instead broadly preempting state law claims that relate to or are based on the duties established by either subsection. Interpreting Section 1681t(b)(1)(F) as Petitioner urges, to preempt only those claims that are based on Section 1681s-2(b) where Section 1681t(b)(1)(F)'s preemption provision by its plain terms includes claims based on Section 1681s-2(a), would artificially limit the express preemption provided by Congress.[5] If Congress had intended that Section 1681t(b)(1)(F)'s preemption be so limited in scope, it could have written Section 1681t(b)(1)(F) to read: "[n]o requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under . . . section 1681s-2*(b)* of this title." Congress did not. Petitioner's state law claims are covered by the plain terms of Section 1681t(b)(1)(F) and were properly found to be preempted.

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5. Limiting Section 1681t(b)(1)(F)'s preemption to suits based on duties established by Section 1681s-2(b) also would create the anomalous situation in which state law claims based on duties privately unenforceable under federal law would survive preemption, but those based on duties enforceable by private federal rights of action would be preempted. The district court rejected such an anomalous reading and followed the broader and textually faithful understanding of Section 1681t(b)(1)(F).

CONCLUSION

In the absence of any of the traditional criteria for certiorari, Petitioner asks this Court to review and reject the Eleventh Circuit's factual findings and its application of Section 1681h(e), in order that this Court can proceed to reach a separate legal question, the scope of Section 1681t(b)(1)(F), not addressed by the Circuit Court and not necessary to dispose of this case. For the reasons laid out above, this petition utterly fails to satisfy this Court's standards for review and should be denied.

Respectfully submitted,

ANDREW G. MCBRIDE
Counsel of Record
MEGAN L. BROWN
WILEY REIN LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000

Counsel for Respondent

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APPENDIX

APPENDIX A

15 U.S.C. § 1681h

(e) Limitation of liability

Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report except as to false information furnished with malice or willful intent to injure such consumer.

APPENDIX B

15 U.S.C. § 1681t

(a) In general

Except as provided in subsections (b) and (c) of this section, this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(b) General exceptions

No requirement or prohibition may be imposed under the laws of any State—

(1) with respect to any subject matter regulated under—

* * *

(F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply—

Appendix B

(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or

(ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996);

* * * *